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ALEXANDER L. STEVAS,
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No. 83-735

In the

Supreme Court of the United States

October Term, 1983

DAVID P. LONGE,

Petitioner,

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

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November, 1983

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Reason for Denying the Writ.

I.

The petitioner's right to equal protection of the law under the United States Constitution was not violated.

The jurisdiction of this Court to review the decision of the state courts below may be found in 28 U.S.C. Section 1257(3), as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be

had, may be reviewed by the Supreme Court as follows:

* * *

"By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

It is argued that Amendment XIV of the United States Constitution was violated in that the sentence imposed upon the petitioner denied him equal protection of the law. On page 4 of his petition, it is claimed that the defendant received a harsher sentence than the majority of repeat felony drug offenders.

The People respectfully submit that no current statistics or facts are cited by the petitioner in support of his contention. The reports mentioned are dated 1978 and 1979 and refer to the New York drug laws of 1973, not the present statutes.

Secondly, this issue of sentencing under the New York drug laws was previously considered by this Court in *People v. Broadie,* 37 NY2d 100, cert. den. *sub nom. Broadie v. New York,* 423 U.S. 950 (1975). There, this Court denied the petition for a writ of certiorari to the Court of Appeals of New York where the Court had discussed the constitutional equal protection argument in

the context of a cruel and unusual punishment claim, and had found no constitutional violations. See *People v. Broadie, supra,* at page 111.

Finally, this Court has recognized the essential part that plea bargaining plays in the criminal justice process and the finality that fairly obtained guilty pleas should be afforded. *Santobello v. New York,* 404 U.S. 257 (1971).

At bar, the petitioner entered a knowing, voluntary and intelligent plea to a reduced felony charge in satisfaction of three pending felonies. No promises were made regarding sentence. Here, no claim has been made that the plea was coerced or obtained through ignorance or fear. No unfulfilled promise exists, and no plea agreement was breached. This Court should find the plea was properly accepted.

The People respectfully submit that in light of the above circumstances, no constitutional right of the petitioner was violated.

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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